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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 249 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

GULAMNABI MAHMADBHAI VOHRA

Appearance:

MR SP DAVE PUBLIC PROSECUTOR for Petitioner

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 21/03/2001

ORAL JUDGEMENT

1. Heard Shri S.P. Dave, learned APP for the petitioner - State of Gujarat has preferred this appeal challenging the legality and validity of the judgement

dated 17th August, 1999 rendered in Criminal Appeal No. 11/1992 on the file of learned Additional Sessions Judge, Kheda, Camp Court at Anand.

2. It appears from the record that complainant Food Inspector has not complied with Rule 14 of the Provisions of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred as "Rules" for short) before taking samples. As per Rule 14 of the Rules, before taking samples of food articles, Food Inspector is expected to take samples in clean, dry bottle or jars or any other suitable container. In this case, the Food Inspector has taken samples in bottles. The Food Inspector has stated in his deposition that he has no information as to when and by whom sample bottles were cleaned and that bottles were not supervised by him and therefore, as observed by the learned Additional Sessions Judge, Rule 14 of the Rules is not complied with. The Additional Sessions Judge has placed reliance on the case of SUDHIRCHANDRA B. JOSHI FOOD INSPECTOR VS. ARVINDKUMAR NARANBHAI PATEL AND OTHERS, reported in 1995(2), G.L.H. (U.J.) 24, wherein it has been held as under :-

" The Food Inspector had no information as to when and by whom sample bottles were cleaned. Duty is cast on prosecution not only to comply with mandatory provision, but to lead evidence at the trial for its compliance."

This Court has held that compliance of Rule 14 is mandatory.

3. Learned Additional Sessions Judge has also placed reliance on case of STATE OF GUJARAT VS. BHUPENDRA M.MEHTA, reported in 1999(1) G.L.H. 227, wherein it has been observed as under :-

" Duty is cast upon the prosecution not only to comply with the mandatory provision of law by using clean and dry bottles for storing the sample but also to satisfy the Court by leading evidence that the bottles used were clean and dry."

5. The evidence of complaint - Ramesh Sadabhai Patel is recorded in Criminal Case No. 359/90 at ex. 5, which is supplied by learned APP Shri S.P. Dave for the appellant.

6. The Food Inspector has not given evidence on the

point of strict compliance of Rule 14 of the Rules and therefore, this Court finds that there is no substance in this appeal.

7. For the reasons stated above, at this admission stage, this appeal is dismissed.

(H.H. Mehta, J.)

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